

**REMARKS**

The present application now has 65 claims, Claims 1-57 and 59-66 with Claims 1, 46, 53, 54, 58, 59 and 60 being independent claims. All claims stand rejected. The Applicant asserts that the claims are patentable because the cited reference does not disclose promoting a particular product based upon a how a consumer *uses* that product *during* a particular activity.

**Response to Amendment**

The Examiner did not approve the new title "Methods and Systems for Occasion-Based Lifestyle Marketing". The Applicant would appreciate the guidance of the Examiner. The methods and systems claimed herein directly relate to marketing based upon the "occasions" in a consumer's day and/or lifestyle. The Applicant therefore suggests "Methods and Systems for Marketing Based Upon A Consumer's Daily Occasions and Lifestyle."

**35 U.S.C. §112**

The Examiner rejected Claims 44-45 under 35 U.S.C. §112, second paragraph, as being indefinite. The Applicant respectfully traverses the rejection. As previously stated, Beauregard-type claims are routinely allowed in dependent form. By way of example, the Examiner's attention is directed to U.S. Patent Nos. 6,370,599; 6,369,835; 6,367,012; 6,366,912; 6,360,331; 6,360,164; 6,359,572; 6,353,928; 6,353,447; and 6,349,337. Each of these cases has an allowed claim in the format objected to herein. Each of these cases has been issued within the last two months. The Applicant could provide the Examiner with perhaps hundreds of additional examples if desired. The Applicant asserts that these examples establish that the claim format at issue is not indefinite. Rather, the PTO routinely grants such claims.

**35 U.S.C. §102**

The Examiner rejected all claims under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,649,114 to Deaton et al. The Examiner stated as follows, with the Examiner's comments in bold:

Determining one or more representative activities, **such as the customer's purchase history data, including volume purchase data, frequency purchase data, timing of purchase data, recency of purchase data, preference data, and so on**, of said predetermined type of consumer so that the consumer can be specifically targeted (col. 86: 65 to col. 89:22; col. 81: 56 to col. 82: 11; Figs. 27-32; col. 10: 30-67);

Determining one or more representative uses of said item by said predetermined type of consumer **based upon the consumer's purchase history** during said one or more representative activities (col. 71: 31-45; col. 10: 30-67); and

Creating demand for said item by said predetermined type of consumer based upon said one or more representative uses of said item by said predetermined type of consumer during said one or more representative activities **by tracking products purchased by the consumer** (col. 71: 31-45; col. 10: 30-67).

The Applicant respectfully traverses the rejection because Deaton in no way shows each and every element of the claims. As an initial matter with Claim 1, Deaton's disclosure of "purchasing data" as cited above does not read on the "representative activity of the predetermined type of consumer" limitation, i.e., "data" is not a "use". For the sake of argument,

however, assuming that the "representative activity" limitation can be considered "purchasing", then none of the remaining elements of the claim are anticipated.

For example, the second clause in the claim is as follows:

determining one or more representative *uses* of said item by said predetermined type of consumer *during* said one or more representative activities.

Although Deaton describes tracking the type of items purchased by a consumer, there is no mention of determining the *uses* of any type of product by a consumer *during* one or more representative activities. *See* col. 71, line 31-45. In other words, Deaton is silent on what a consumer does with a product *during* the only alleged representative activity described therein, i.e., purchasing or shopping. The mere fact that a particular consumer purchases coffee does not provide any information on the activities the user may be engage in *during* the time the user is *using* (drinking) the coffee. For example, Deaton does not promote *using* anything *during* shopping. Rather, the point of Deaton is to encourage the consumer to return to the store by offering various types of coupons based upon what the consumer bought in the past. The Examiner therefore is respectfully requested to provide a reference in Deaton as to *using* an item *during* an activity as opposed to tracking purchase history data. Without such a disclosure, the Applicant asserts that the claim is patentable.

Finally, the third element of the claim is as follows:

creating demand for said item by said predetermined type of consumer based upon said one or more representative *uses* of said item by said predetermined type of consumer *during* said one or more representative activities.

The only "demand" described in Deaton is to encourage the consumer to return to the store by offering different types of coupons. Deaton is silent on creating demand for an item based upon one or more representative *uses* of that item *during* one or more representative activities of the

consumer. Specifically, Deaton does not describe creating demand for anything based upon how a consumer *uses* a particular item *during* a shopping trip. Deaton therefore also fails to disclose this third element of the claim.

The Applicant respectfully submits that Deaton is silent on the second and third elements of the claim. Without a teaching in Deaton concerning promoting a product based upon how a consumer *uses* that product *during* an activity, the claim is patentable over the cited reference.

The Applicant further traverses the rejection of Claims 2-19, 24-31, 34-37, 39-42, 44, 45, 47-52, and all other claims for the reasons stated above with respect to Claim 1 and for the reasons stated in the original response, which the Applicant incorporates by reference. The Examiner explained how Deaton describes a system for providing point of sale coupons based upon shopping transaction data. The claims at issue, however, have specific limitations concerning the predetermined type of consumer, the representative activities, the representative uses, and the steps of creating demand. As was pointed out in the previous response, Deaton in no way discloses anything concerning a "home category manager" (Claim 5), representative uses of a beverage (Claim 6), creating demand by the home category manager by suggesting the use of a beverage as a meal enhancer (Claim 7), or creating demand by the home category manager by suggesting the use of the beverage as refreshment (Claim 8). The Applicant thus asserts that claims are all patentable because Deaton lacks a specific disclosure of each of the limitations found in the claims.

Likewise with respect to Claims 20-23, 32, 33, 38, and 43, the Examiner stated that the limitations therein were "inherently" disclosed in Deaton. The Applicant respectfully traverses the rejections for the reasons given above and for the reason that Deaton in no way

discloses, inherently or otherwise, the specific limitations recited therein. For example, just because Deaton describes one type of marketing scheme does not mean that there is anything "inherent" in limitations such as "immediate consumption packaging" (Claim 22), "in-store displays (Claim 32), or the use of a "virtual environment". The Applicant thus asserts that the claims are patentable without a specific disclosure in Deaton.

The Applicant respectfully traverses the rejection of independent Claim 46. Independent Claim 46 is similar to Claim 1, with the additional step of determining the manner in which the consumer selects the item in the predetermined shopping environment. The Applicant traverses the Examiner's rejections for the reasons given above with respect to Claim 1. The Applicant further traverses the rejection because Deaton is silent on the limitation of determining the manner in which the consumer selects the item.

Although the Examiner explained in detail the data mining and niche marketing techniques described in Deaton, these techniques have nothing to do with analyzing *how* a particular shopper selects an item while shopping. Rather, Deaton is only concerned with providing coupons so as to encourage future trips. Deaton is silent on analyzing what a shopper may do in the present trip. Without such a disclosure, the present claim is not anticipated.

The Applicant respectfully traverses the rejection of independent Claim 53. Independent Claim 53 states as follows:

A method for promoting the selection of a beverage by a consumer, comprising the steps of:  
determining the daily activities of said consumer;  
determining the needs of said consumer for said beverage during said daily activities; and  
marketing said beverage in association with said needs of said consumer for said beverage during said daily activities.

The Applicant respectfully requests the Examiner to explain how Deaton describes or even hints at the limitation of "determining the needs of said consumer for said beverage during said daily activities." The Applicant respectfully submits that Deaton's analysis of customer purchase tendency has nothing to do with why a consumer needs a product, much less a beverage. The Applicant thus asserts that Deaton fails to anticipate a single element of this claim.

The Applicant further traverses the rejection of independent Claim 54. Claim 54 includes the occasion-based marketing steps as described above but also adds further limitations concerning the effectiveness of the marketing campaign, i.e., determining the difference between the number of items purchased during a first predetermined interval and a second predetermined interval. In addition to the reasons given above with respect to Claim 1, the limitations of Claim 54 involve tracking the results of a marketing solution based upon how one or more types of shoppers use a particular item during a particular activity. Without a disclosure of tracking the results of such a use-based solution within Deaton, the present claim is not anticipated.

Likewise with respect to Claims 55-57 and 63-64, the Examiner stated that it is "anticipated" that the system of Deaton would contain the various limitations described therein. The Applicant traverses the rejection and requests a specific citation within Deaton of such limitations such as an "average transaction amount" or "average gross profit margin" as specifically claimed therein.

The Applicant respectfully traverses the rejection of independent Claim 59. Claim 59 also includes the steps of determining the representative activities, storing data concerning such, receiving data concerning what the representative uses for an item by the consumer may be, storing the data, and determining the relationship between the representative

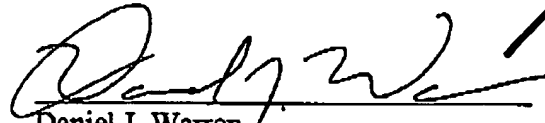
activities and the representative uses. The Applicant traverses the rejection for the reasons given above with respect to Claim 1 and because Deaton makes no disclosure as to storing data or other information related to the representative activities of a type of consumer or the representative uses of an item by that consumer. The Examiner is respectfully requested to provide a reference in Deaton as to information concerning the uses of an item as opposed to mere purchase history data. The Applicant asserts that there is no such disclosure. The Applicant further traverses the Examiner's rejection of Claims 60-62 and 65 for the reasons given above.

The Applicant respectfully traverses the rejection of independent Claim 66. Independent Claim 66 concerns a storage device and a processor. The storage device stores data relating to one or more activities of a consumer and one or more needs of that consumer for an item. The Applicant respectfully traverses the Examiner's rejection for the reasons given above with respect to Claim 1. Further, the Examiner is respectfully requested to show where in Deaton discloses how a consumer uses any particular item. The Applicant asserts that there is no such disclosure.

**CONCLUSION**

The Applicant respectfully submits that the case is in condition for allowance. Deaton is not an adequate Section 102 reference in that it does not describe how a consumer uses an item during a particular activity. Merely tracking purchase data does not involve a "use" as defined herein. Any questions can be directed to the undersigned at (404) 853-8028.

Respectfully submitted,

  
Daniel J. Warren  
Reg. No. 34,272

**SUTHERLAND ASBILL & BRENNAN LLP**  
999 Peachtree Street, N.E.  
Atlanta, Georgia 30309-3996  
(404) 853-8000  
Former Docket: 03628-0400  
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